



Tennessee State Board of Accountancy
Department of Commerce and Insurance
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MEETING MINUTES

October 28, 2005

The meeting of the Tennessee State Board of Accountancy convened in the Davy Crockett Tower, Nashville, Tennessee on Friday, October 28, 2005, at 8:00 a.m.

Members present were Doug Warren, Chairman; Kenneth Cozart, Vice-Chair; Max Haught, Secretary; William Underwood, Stanley Sawyer, Joseph Buffler, Al Creswell, Terri Jeter-McAvoy, Charles K. Grant, and Vic Alexander.

Also present were Linda Biek, Executive Director; Ernie Sykes, Staff Counsel; Leona Johnson, Administrative Assistant; Mark Crocker, Investigator; Dan Syriac, Administrative Manager; Robert Fellman, Administrative Judge; Carissa Boone, Court reporter; and Brad Floyd, Executive Director of the TSCPA.

Mr. Warren called the meeting to order. There are two items to add under the announcements for our agenda.

To begin with, the Board has a rule-making hearing scheduled on November 18th. We will be asking for volunteers for the Board members that can attend on that date. Ms. Jeter-McAvoy and Mr. Haught indicated they can attend. Mr. Buffler said he may have to be out of town; but if he's in town, he'll definitely be there.

Secondly, we need to have a discussion on whether or not to proceed with the consideration of supporting a law change that would allow candidates to sit for the exam after they get their 120 hours. After a lengthy discussion, Mr. Underwood made a motion for the Board to move forward with research on allowing candidates to sit for the exam after they get their 120 hours. Mr. Buffler seconded the motion; it was voted on and approved. A Committee was set up starting with Bill Underwood, Vic Alexander and Joe Buffler. Ms. Biek pointed out that Kentucky is one state that's looking into changing their law, where you can sit at the 120, after you receive your bachelor's degree; New Jersey is as well. Kentucky is the neighboring state, so what we could see happening, as we did experience with the 150, is people from Tennessee going to Kentucky to take the exam because they could take it after they get their bachelor's degree. Georgia is already allowing candidates to sit after receiving their bachelor's degree.

Mr. Warren moved on to the consent agenda and asked if there was anything on the consent agenda anybody wanted to have removed? Mr. Haught asked that item No. 3

about the scholarship program and item No. 7, the Board's position on the uniform Accountancy Act both be pulled from the consent agenda. Mr. Warren informed the Board members that the purpose of the consent agenda is to put items that do not require debate that could be approved in one motion; that way we wouldn't have to take the time to introduce each item and then take a motion independently. The rule of the consent agenda is, if anybody has any objection to any item that you want to take off and discuss, then that's certainly done. All it takes is one person to say, "I want that item removed." At this time, of the seven items on the consent agenda, Items 3 and 7 are being pulled. Do we have a motion to approve the consent agenda with Items 3 and 7 removed? Ms. Jeter-McAvoy motioned to approve the consent agenda. Mr. Alexander seconded the motion; it was voted on and approved.

At this time we will go ahead and deal with those items pulled from the consent agenda.

1) Item 3 deals with the scholarship program. After a brief discussion the Board agreed that the Board is not in a position to get involved at this time and by consensus, agreed to table this action until some later point in time.

Ernie Sykes interjected to inform the Board that he had spoken with the respondent for which the formal hearing is being held and may have a settlement offer. Ernie gave a synopsis of the case history and offered to settle the case with a civil penalty of \$2,000, which includes back firm fees beginning 2001, as well as a suspension of his accountancy license for a period of six months. After some discussion the Board agreed to go ahead with the formal hearing as scheduled.

2) Mr. Warren continued with the consent agenda, Item 7. Linda distributed a letter in response to the UAA proposed changes at our September meeting. After some discussion the Board agreed that the letter did represent the Board's position; however one editing change would be made to change the word "they" in the last paragraph (in January they plan on evaluating) to "the Board". Mr. Warren asked if anybody proposed any action. Ms. Jeter-McAvoy made a motion to approve the letter with the one modification. Mr. Haught seconded the motion; it was voted on and approved.

Linda Biek presented the **Executive Director's Report**: (see attached report)

1) The Board meeting schedule. One day scheduled for each of the Board meetings. The day before that is reserved for committee meetings. January 6, 2006; April 28, 2006; July 28, 2006 and October 27, 2006.

2) Doug Warren has been selected to serve on the Board of Examiners. That's a very, very prestigious job and he should be very proud. Doug has also been appointed to some other committees through the AICPA and through NASBA. In addition, Terri Jeter-McAvoy had been selected for Athena award in Chattanooga. This is very prestigious award and quite an honor.

3) The rule-making hearing is scheduled for November 18th at 1:30. This is an opportunity for the public to comment on the rules. The process is as follows. After the rule-making hearing, the rules will come back before the Board in January for the full vote of the Board. There may be something that happens at the rule-making hearing that needs to come before the Board in January for consideration of changes to the proposed

rules. Assuming there's not a proposed change, you'll vote on the rules in January; they'll be sent to the Attorney General's Office where they'll be reviewed and approved. We have no way of knowing how long they will be at the AG's Office. The Board should anticipate at least six months, but we don't know. After they get AG approval, they'll go to the Secretary of State's office where they sit for 75 days. After they sit for 75 days, they will then go into effect.

4) Next is the budget presentation. Ms. Biek met with Bill White from the fiscal department about a week ago, and he provided revised numbers. Those numbers are reflected in the most recent budget. Ms. Biek presented the updated budget.

5) Moved to consent agenda.

6) A couple of Board members have stated that they feel that complainants in certain situations should be invited to the formal hearing or an informal conference to give their side of the story. Mr. Sykes gave his legal opinion on this situation. After much discussion Mr. Underwood made a motion that the Board notify the complainant when a formal hearing is scheduled. Mr. Sykes agreed to develop a form letter which will say, "We're notifying you that the referenced case on which you filed a complaint is to be presented for a formal hearing. You are welcome to attend as is any other member of the public, but let us make it clear that you're not a party to this action and unless you are to serve as a witness, you are to have no role in the proceedings." Mr. Haught made a motion to approve such letter. Mr. Buffler seconded the motion; it was voted on and approved.

7) The next item on Ms. Biek's list concerns a quest for continuing improvement. She asked the Board to approve the implementation of an online survey for anybody that visits the Board website. After a brief discussion Mr. Cozart made a motion to approve the development of the online survey. Mr. Alexander seconded the motion; it was voted on and approved.

8) In Nebraska, a convicted felon went through the process of trying to get his CPA license; he was denied by the Board. The whole point of adding this is to illustrate how important it is that the rules describe exactly what you want. If you want to review information on convicted felons before allowing them to sit for the CPA exam or before allowing them to become licensed, it should be in the rules. The Board can't just assume that all CPAs should have good moral character and since everybody knows that it doesn't need to be put in the rules. Fortunately, that is in the law and rules, so we're covered. But that's why it's important as you come across areas where we're just operating under common sense, those may be opportunities for us to add things to the rules. So I ask you to always be on alert for things that could be included in the rules that would help strengthen the position of the Board of Accountancy as we move on.

Ernie Sykes presented the **Attorney's Report**: (copy attached).

There were a couple of issues brought up at the September 9th retreat that the Board members wanted me to look into that I'm going to verbally report on today.

1) Whether the Board can employ the AG's office to collect civil penalties from recalcitrant respondents, and the short answer to that is yes, the Board can. The answer is yes, but not until the Board has a final order. In other words, with just a consent order, the issue cannot be referred to the AG's office. Which is why if we don't have respondents paying consent orders, the Board's final sanction is to take it to a formal hearing. After the formal hearing, the court will refer it over. What I think would be a good

idea is if we have a few outstanding civil penalties, if we could lump them together and send them over to the AG's office for a consolidated collections action that would make it much more palatable for the AG's office. Mr. Warren asked Ernie to submit at our January Board meeting a list of out-standing consent order fees and penalties not paid.

2) Can the Board publish the names of those CPA firms who have not complied with the peer review requirements, if we can provide a list of such people on the web site? Mr. Sykes states that, according to the statutes, he has seen nothing at all to prevent the Board from listing those people who have not obtained their peer review by the due date. We can provide a list on the web if the Board chooses to do so. After much discussion Mr. Buffler made a motion to allow the staff to publish the names of those firms that have expired permits because of failure to comply with the peer review requirement. Mr. Underwood seconded the motion; it was voted on and approved.

FORMAL HEARING #1: (Sidney Johnson, Docket No. 12.19-079005A.)

Doug Warren turned the floor over to Administrative Judge Bob Fellman. Judge Fellman made opening remarks including the docket # 12.19-079005A, the case of the Tennessee State Board of Accountancy VS Sidney Johnson. Judge Fellman asked the Board Members to introduce them selves for the record. Doug Warren pronounced there was a quorum of the Board present. Judge Fellman asked the Board Members to recuse themselves if they have had any outside contact regarding this case. The record in this case includes the Notice of Hearing and Charges which was filed with the Secretary of State's office on September 23rd, 2005, and a prehearing order sent out October 14th, 2005, basically outlining the procedures to be followed during this hearing. No part of the record will be considered as evidence unless introduced as such during the hearing. Ernest Sykes represents the State in this matter, and Mr. Sidney Johnson is represented by himself. Judge Fellman swore in all of the witnesses. Mr. Sykes gave his opening statement and Mr. Johnson denied the opportunity to give an opening statement. Mr. Sykes called Mr. Crocker to the stand for a question and answer session. Mr. Sykes entered into the record the Notice of Hearing and Charges. Mr. Sykes called Ms. Biek to the stand for a question and answer session. Mr. Sykes called Mr. Johnson to the stand for a question and answer session. Mr. Sykes entered into evidence Exhibit #1, U.S. Income Tax Return from an S corporation for Bearing and Supply, Incorporated prepared by Mr. Johnson. Mr. Sykes entered into evidence Exhibit #2, a letter from former Board of Accountancy staff attorney, Connaught O'Connor which also includes a consent order issued November 23, 2004. Mr. Sykes entered into evidence Exhibit #3, a green card bearing Mr. Johnson's name, his CPA designation, and his address signed by Mary Johnson (wife) on December 1, 2004. Mr. Sykes entered into evidence Exhibit #4, a letter from former Board of Accountancy staff attorney, Connaught O'Connor which also includes a consent order issued December 30, 2004. Mr. Sykes entered into evidence Exhibit #5, a green registered return receipt requested bearing Mr. Johnson's name, his CPA designation, and his address signed by Mary Johnson, his wife, on January 14, 2005. The Board Members then had the opportunity to ask questions of Mr. Johnson.

Mr. Sykes announced to the Court that the State rests its case. Mr. Johnson made an apology to the Board Members and to the Judge for being late and for his license status being in the state it is. Mr. Johnson made a statement to the Board indicating that he is embarrassed and does not want to lose his CPA license. He also indicated that he may

have a medical condition that attributed to his current license situation. The Board Members asked questions of Mr. Johnson and then Mr. Sykes made his closing remarks; Mr. Johnson denied the opportunity to make a closing statement.

Findings of Fact:

- 1) The respondent held accounting license number 3970, issued by the Tennessee State Board of Accountancy.
- 2) The respondent held accounting firm registration number 655, which expired December 31, 1995, issued by the Tennessee State Board of Accountancy.
- 3) Through an investigation completed on July 23, 2004, the respondent stated in a sworn statement on or about July 13, 2004 that he "was unaware that" his "firm was unregistered." He further stated that he performed "tax work and advising exclusively." He stated he does not perform compilations, reviews or audits. He also so stated that he is "the only licensee of the Accountancy Board and the only one who signs anything."
- 4) In the investigation, the investigator obtained from the respondent a tax return from Bearing & Supply, Inc. In the "Paid Preparer's Use Only" box was the respondent's name, CPA credential and address as 1635 Poplar Estates Parkway, Germantown, Tennessee 38138-2536.
- 5) The respondent prepared tax returns, performed accounting services and used the CPA credential with an invalid firm registration that expired in 1995.
- 6) The respondent failed to respond to the Board on December 19, 1996 and January 10, 2001, in which the respondent had fourteen (14) days to respond to the complaint notices.
- 7) The respondents acts and conduct constitutes violation of Tenn. Code Ann. 62-1-113 (d) (1) and (2) which states in pertinent part as follows: (d) No firm shall provide attest services or assume or use the title "certified public accountants," or the abbreviation "CPAs," or any other title, designation, words, letters abbreviation, sign or card , or device tending to indicate that such firm is a CPA firm unless (1) The firm holds a valid permit issued under 62-1-108; and (2) Ownership of the firm is in accord with this chapter and rules promulgated by the Board;
- 8) The respondent's acts and conduct constitutes violation of rule 0020-3-.16(3) which states in pertinent part as follows: (3) Upon the receipt of a complaint against a licensee, the Board may transmit a copy of such complaint to the licensee. Such licensee shall, within fourteen (14) days of receipt, file a written answer to the complaint with the Board, unless otherwise granted an extension of time;
- 9) The Board is authorized to discipline under rule 0020-4-.03 (1)(C) of the rules of the Tennessee State Board of Accountancy, which states in pertinent part: Violations of this Act or of rules promulgated under the Act, include but are not limited to: 1. Using the CPA or PA title or providing attest services in this State without a certificate, registration or permit to practice or without properly qualifying to practice across state lines under the substantial equivalency provision of the Act;
- 10) The respondent's violations of Tenn. Code Ann. 62-1-113(d)(1) and (2) and rules 0020-3-.16(3) and 0020-4-.03(1)(C) of the Rules of the Tennessee State Board of Accountancy, constitute grounds for the revocation, suspension or restriction of the respondent's Tennessee accounting license and /or the imposition of other lawful

discipline pursuant to Tenn. Code Ann. 56-1-308(2), 62-1-111 and Rule 0020-4-.02 [Civil Penalties] of the Board's Rules of Disciplinary Action and Civil Penalties.

- 11) We further find that the respondent's CPA certificate was also delinquent, which constitutes a violation of Tenn. Code Ann. 62-1-113 (c) No person not holding a valid certificate shall use or assume the title "certified public accountant," or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant.

Mr. Alexander made a motion to approve the findings of fact. Mr. Underwood seconded the motion; it was voted on and approved.

Conclusion of Law:

- 1) The Respondent's acts and conducts were in violation of Tennessee Code Annotated Section 62-1-113(d)(1)(2), pertinent to the fact that no firm shall provide test functions and assume the use of the title CPA or the abbreviations CPA or any other title, designation, words, letters, abbreviations, sign, or card to indicate that such firm is a CPA, unless the firm is registered, which we find that he is in violation of firm registration in regards to Section 62-1-108.
- 2) The Respondent's acts and conducts were in violation of our Rule 0020-3-1.16(3) which states that upon receipt of a complaint against a licensee, the Board shall transmit a copy of such complaint to the licensee. The licensee shall within 14 days of receipt to file a written answer to the complaint with the Board, unless otherwise granted an extension of time. We find that that response was not received.
- 3) Our Rule 0020-4-103(1)(c) states in pertinent part: Violations of this Act or of rules promulgated under the Act, include but are not limited to: 1. Using the CPA or PA title or providing attest services in this State without a certificate, registration or permit to practice or without properly qualifying to practice across state lines under the substantial equivalency provision of the Act.
- 4) Tennessee Code Annotated 62-1-113 (d)(1)(2) and our rules 0020-3-.16(3) and 0020-4-.03(1)(c) of the rules of the State Board of Accountancy constitute grounds for revocation, suspension, or restriction of the respondent's Tennessee Accountancy License under the provision.
- 5) The Respondent's acts and conducts were in violation of 62-1-113 (c) No person not holding a valid certificate shall use or assume the title "certified public accountant," or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant.

Mr. Alexander made a motion to approve the findings of fact. Mr. Underwood seconded the motion; it was voted on and approved

Disciplinary Action the Board Intends to Take:

Mr. Underwood made a motion for a six month suspension after which time he must appear at the April 28th meeting with a medical report that satisfies the Board that he is physically capable of practicing public accountancy, and by that time he must have paid all fees which total \$1,740 as well as any civil penalties the Board might impose. Mr. Grant seconded the motion; it was voted on and approved. Mr. Underwood made a motion to

include a civil penalty of \$1,000 plus the cost of these proceedings. Mr. Grant seconded the motion; it was voted on and approved.

Policy Statement:

Mr. Warren made a motion to approve the following as the policy statement: The Tennessee State Board of Accountancy is charged with the duty to regulate the practice of accountancy in the state of Tennessee and to protect the public of this state. That is the requirement that prohibits a non-licensee from practicing public accounting and using the CPA designation on an expired CPA license and without firm registration. It protects the public in insuring that public accounting services are performed by licensed certified public accounts or public accounts that are required to meet certain standards and requirements. In the case of Sidney B. Johnson, the Board finds Sidney B. Johnson violated the references to the State Board of Accountancy law in the rules cited above. Mr. Underwood seconded the motion; it was voted on and approved.

Stanley Sawyer and Ernie Sykes presented the **Probable Cause Committee Report:** (copy attached).

Mr. Sawyer reported that the Committee reviewed 26 cases including 5 with fines totaling \$30,600; two revocations; two informal conferences; eleven dismissals; two letters of warning; one letter of instruction; and one litigation monitoring.

Mr. Sykes informed the Board members that the Committee made three changes from the original report. Case #6 was changed to reflect a civil penalty of \$17,000. Case #9 was changed to reflect a civil penalty of \$9,000 plus eight (8) hours of Ethics CPE. Case #13 was changed to a letter of instruction. Mr. Sawyer made a motion to approve the Probable Cause Committee report. Mr. Underwood seconded the motion; it was voted on and approved.

Ken Cozart presented the **Licensing Committee Report:** (copy attached)

- 1) Board approved exempt CPE sponsors are being asked to reapply and have been sent an application to do so. The Committee will require that those sponsors reapply every three years with 12 months of CPE being supplied to the Committee.
- 2) The Committee approved a new checklist to use to spot audit CPA files. The Committee performed 21 spot audits on new CPA files since the pervious Board Meeting.
- 3) NASBA has reorganized the fields of study for CPE, see attached chart.
- 4) NASBA has requested permission to allow exam candidates to view their grades via the internet. Fourteen states are now doing this. Our Committee recommends approval of this request.
- 5) The reciprocal agreement between the USA, Canada and Mexico includes four components 1) completion of the CA or CPC exam. 2) Completion of the IQEX exam. 3) Meeting the Ethics requirement. 4) Having 4 years of experience within the last 10 years.
- 6) The Committee requests to have the Committee name changed to Licensing Committee.

Mr. Buffler made a motion to approve the Licensing Committee report. Mr. Cozart seconded the motion; it was voted on and approved.

Max Haught presented the **Finance and Administrative Committee Report:**

- 1) The Committee has changed its name to reflect more correctly the activities of the Committee.
- 2) The Budget has been presented earlier by Linda Biek. Max Haught made a motion for the Board to approve the fiscal year end June 30, 2006 budget as presented earlier. Mr. Underwood seconded the motion; it was voted on and approved.
- 3) The Committee will develop a wish list of long term and short term needs of the Board. Stan Sawyer will be putting together a questionnaire to send out to the Board Members. These will be reviewed and discussed in the Committee Meeting and reported to the Board at the next Board Meeting.
- 4) Allowing exam candidates to sit for the exam prior to meeting the 150 hour rule was discussed, as earlier mentioned in our meeting. The TSCPA Board will also be discussing this at their meeting on November 18, 2005.
- 5) The Board staff has requested approval to destroy PA candidate files over twenty (20) years old. Mr. Buffler motioned to approve this request. Mr. Cozart seconded the motion; it was voted on and approved.

Bill Underwood presented the **Peer Review Committee Report:** (see attached)

- 1) Second notices have been sent out to 84 firms that have not responded to the peer review notice for 2005. Final notices will be issued in November.
- 2) Eight firms that were due a peer review in 2004 still have not complied. In addition, their firm permit has expired for their failure to comply with peer review.
- 3) The Committee signed twelve (12) letters for peer review exemption status that are no longer performing attest services.
- 4) The Committee would like to recommend the following discipline policy for firms in violation of the peer review requirement: **Failure to obtain a peer review: \$250 civil penalty if the P.R. is received within 60 days of a complaint; \$500 civil penalty if the P.R. is not received within 60 days of a complaint; Informal conference if the respondent is non-responsive.** Mr. Underwood motioned to approve the discipline policy. Mr. Alexander seconded the motion; it was voted on and approved.
- 5) NCCPAP has requested to be approved as a peer review program accepted by our Board. Our Committee and PROC would like to further research this organization and will report back to the Board in January.
- 6) The Committee requests at this time that the Board authorize our Committee to go forward with a project to work with the TSCPA in collecting peer review information of our CPA that are members of the TSCPA. Mr. Underwood motioned to approve this request. Mr. Alexander seconded the motion; it was voted on and approved. Mr. Sawyer motioned to approve the Peer Review Committee Report. Ms. Jeter-McAvoy seconded the motion; it was voted on and approved.

Old Business:

KPMG: Our Board has written and received a response from them indicating that there were no Tennessee CPA's or Firms involved in the current law suit.

New Business:

- 1) Refreshments are no longer approved in the State Budget. Therefore we will ask for donations from the Board Members if you wish to continue to have refreshments available at our Board Meetings.
- 2) The AICPA New Jersey offices have moved to Durham.
- 3) Linda will send an e-mail with the web link regarding the AICPA research on Independence for those who issue compilations.

There being no further business to come before the Board the meeting was adjourned.

CHAIRMAN

SECRETARY